



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 448

IN THE MATTER
OF
THOMAS C. NORTON

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Thomas C. Norton (Senator Norton) pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On December 12, 1990, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Senator Norton. On January 16, 1991, the Commission initiated a second preliminary inquiry into possible violations of the financial disclosure law, G.L. c. 268B, by Senator Norton. The Commission concluded these inquiries and, on February 19, 1992, found reasonable cause to believe that Senator Norton had violated G.L. c. 268A and G.L. c. 268B, and authorized the initiation of adjudicatory proceedings. On August 5, 1992, the Commission's Enforcement Division (Enforcement Division) issued an Order to Show Cause, commencing adjudicatory proceedings. The Order to Show Cause alleged that Senator Norton had violated G.L. c. 268A, §6 and §23(b)(3), by and in connection with his supervision of his sister during her employment by the Senate, and G.L. c. 268B, §7, by failing to disclose certain information on his annual Statements of Financial Interests filed with the Commission. On August 25, 1992, Senator Norton answered the Order to Show Cause, denying that he had violated the law and stating several affirmative defenses.^{1/}

The Commission and Senator Norton now agree to the following findings of fact and conclusions of law:

1. Senator Norton is a Massachusetts state senator, an elected and salaried office which he has held since January 1985. As a senator, Norton is a state employee as that term is defined in G.L. c. 268A, §1(q). Prior to his election as a senator, Senator Norton was a state representative from 1973 through 1984.

2. Senator Norton has a sister named Elizabeth Bevilacqua (Bevilacqua). From 1978 through 1984, Bevilacqua was employed full-time by the state House of Representatives (House) as a legislative aide. Bevilacqua was hired as a legislative aide by the House Rules Committee. While she was employed by the House, Bevilacqua was assigned to the Energy Committee, which was co-chaired by Senator Norton, who was then serving in the House. From January 1985 through 1991, Bevilacqua was employed full-time by the state Senate as a legislative aide. Bevilacqua was hired as a legislative aide by the Senate Rules Committee. During her employment by the Senate, Bevilacqua was assigned to the Government Regulations Committee, which was co-chaired by Senator Norton.

3. Bevilacqua was one of seven Senate employees, including legislative aides and secretaries, assigned to the Government Regulations Committee. As committee co-chairman, Senator Norton directly supervised the Senate employees assigned to the Government Regulations Committee, including Bevilacqua. As co-chairman of the Government Regulations Committee and Bevilacqua's direct supervisor, Senator Norton assigned work to Bevilacqua, determined where and when Bevilacqua would perform her work for the Senate, and approved Bevilacqua's vacation schedule. While employed by the Senate, Bevilacqua was assigned by Senator Norton to work at his district office in Fall River.^{2/}

4. Except as otherwise permitted by that section, G.L. c. 268A, §6 prohibits a state employee from participating

as such in any particular matter in which, to his knowledge, a member of his immediate family has a financial interest. None of the exceptions to G.L. c. 268A, §6 apply in this case.

5. Bevilacqua is a member of Senator Norton's immediate family and had a financial interest, known to Senator Norton, in her supervision as a Senate legislative aide. For example, Bevilacqua had a financial interest in her work assignments as a legislative aide, including where she was assigned to work, and in the approval of her vacation schedule. The supervision of Bevilacqua's Senate employment encompassed particular matters within the meaning of G.L. c. 268A.

6. By supervising Bevilacqua, as set forth above, Senator Norton participated officially in particular matters in which a member of his immediate family had a financial interest which was known to him. In so doing, Senator Norton violated G.L. c. 268A, §6.

7. In January 1986, Senator Norton moved his district office into office space at the South Main Place mall (the Mall) in Fall River.

8. Also in January 1986, Senator Norton organized Patrick Marketing, Inc. (Patrick Marketing) as a Massachusetts corporation. According to the corporation's articles of organization, the purpose of Patrick Marketing was to provide advertising, public relations and marketing services. The corporation's address was the same as that of Senator Norton's district office. Senator Norton was the sole owner and the president of Patrick Marketing.

9. In early 1986, Senator Norton, acting privately as a licensed real estate broker, was instrumental in a Chinese restaurant becoming a tenant in the Mall. The Mall's operator paid Senator Norton a \$4,500 commission for his assistance in this real estate matter. Subsequently in early 1986, Senator Norton deposited the \$4,500 commission into a checking account for Patrick Marketing which he had opened.

10. The initial \$4,500 deposited into the Patrick Marketing checking account was substantially expended by April 1987, by which time the checking account had a balance of less than \$500. The checking account funds were expended for various purposes, including to pay for a telephone system for Senator Norton's district office, to purchase a camera and other photographic equipment for the district office and to pay the corporation's state and federal taxes.

11. In May 1987, Patrick Marketing began to receive monthly payments of \$200 from Senator Norton's campaign committee, "Friends of Tom Norton." According to the campaign committee's campaign finance reports, filed with the Office of Campaign and Political Finance (OCPF), these payments were for "rent." These payments ceased after November 1988, following OCPF's informing the campaign committee that the payments were prohibited. During the nineteen months that Patrick Marketing received these payments from Senator Norton's campaign committee, the corporation's checking account funds were expended to pay for the rental of Senator Norton's district office's telephone system and to pay the corporation's state and federal taxes. Thereafter, a small balance was maintained in the Patrick Marketing checking account and the district office's telephone system continued to be paid for out of that account through 1990.

12. State and federal tax returns for the years 1986 through 1990 were filed for Patrick Marketing. The Patrick Marketing tax returns were signed by Senator Norton as corporate president. The 1986, 1987, 1988 and 1989 tax returns reported annual gross receipts of \$4,500, \$2,080, \$2,468 and \$1,738 respectively. The 1990 tax returns reported no receipts. Patrick Marketing was dissolved as a corporation in late 1990.

13. As a state senator, Senator Norton has annually filed Statements of Financial Interests (SFIs) with the Commission pursuant to G.L. c. 268B. On his 1986 SFI, prepared and filed in 1987, Senator Norton did not disclose that he had received \$4,500 in income as a result of the commission paid to him in connection with his facilitating the Chinese restaurant becoming a tenant at the Mall. Nor did Senator Norton disclose on his 1986 SFI that he had a financial interest in Patrick Marketing. On his 1987, 1988, and 1989 SFIs, respectively prepared and filed in 1988, 1989 and 1990, Senator Norton did not disclose his financial interest in Patrick Marketing. The information omitted by Senator Norton from his SFIs was required to be disclosed on those forms, pursuant to G.L. c. 268B, §5(g)(1).^{3/}

14. Section 7 of G.L. c. 268B prohibits the filing of a false SFI. A false filing need not be willful or intentional to violate G.L. c. 268B, §7. The statute requires a commitment to a reasonable degree of care and diligence in filing SFIs. *See In re Logan*, 1981 SEC 40, 49. By not disclosing the information on his SFIs as set forth above, Senator Norton negligently, rather than willfully or intentionally, failed to exercise reasonable care and ordinary diligence in filing those SFIs. In so doing, Senator Norton violated G.L. c. 268B, §7.

In view of the foregoing violations of G.L. c. 268A and G.L. c. 268B by Senator Norton, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Senator Norton:

1. that Senator Norton pay to the Commission the sum of one thousand dollars (\$1,000.00) as a civil penalty for violating G.L. c. 268A, §6;
2. that Senator Norton will amend his 1986, 1987, 1988 and 1989 SFIs to include the above-stated previously omitted information; and
3. that Senator Norton waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.^{4/}

Date: December 15, 1992

^{1/}The Order to Show Cause alleged that Senator Norton violated G.L. c. 268A, §23(b)(3), in his supervision of his sister by acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that his sister could unduly enjoy his favor in the performance of his official duties, in that Senator Norton had allegedly allowed his sister to work under conditions which made it impossible to determine whether or not she had performed her duties as a Senate employee. This allegation was based upon information obtained during the Enforcement Division's investigation of this matter, including evidence that no records were kept of the hours that Senator Norton's sister worked or of the work that she performed as a Senate employee. Following a pre-hearing conference in this matter on October 8, 1992, the Enforcement Division and Senator Norton exchanged discovery, formally and informally, and Senator Norton provided further evidence, satisfactory to the Enforcement Division, that his sister had performed substantial work as a Senate employee and that her terms and conditions of employment were the same as those of the other Senate employees supervised by Senator Norton. Accordingly, the Enforcement Division and Senator Norton have agreed to dismiss the allegation of the Order to Show Cause that Senator Norton violated G.L. c. 268A, §23(b)(3). Therefore, the Commission accepts the agreement of the parties and dismisses that allegation.

^{2/}During the period that Senator Norton has been a senator, he has maintained a district office at various locations in Fall River. Senator Norton's district office is staffed by several of the Senate employees who are assigned to the Government Regulations Committee. The district office staff members perform various services for Senator Norton's constituents. From 1986 until 1991, Senator Norton's District office was located at the South Main Place mall in Fall River.

^{3/}Senator Norton asserts that, in making the above-stated omissions, he acted in reliance upon the erroneous advice of his attorney, now deceased, that the information omitted need not be reported because Patrick Marketing was essentially inactive. The Enforcement Division's investigation confirmed that Senator Norton consulted with his former attorney in connection with the preparation of his SFIs. The Commission finds, however, that any such reliance by Senator Norton upon his attorney's erroneous advice was not reasonable given Patrick Marketing's continued, albeit limited, activities through 1990.

^{4/}No civil penalty is being imposed for Senator Norton's violations of G.L. c. 268B, §7. Consistent with Commission precedent, no civil penalty is being imposed for Senator Norton's 1986 SFI omissions because they were made in 1987, prior to the Commission's making clear that negligent SFI omissions are subject to public sanction. *See O'Brien Disposition Agreement*, 1989 SEC 418, 421 fnt. 11. No civil penalty is being imposed for Senator Norton's 1987, 1988 and 1989 negligent SFI omissions because the Commission finds this Disposition Agreement itself to be an adequate sanction for those violations in light of all of the circumstances of this case, including the fact that Patrick Marketing was relatively inactive after 1986.